SUPREME COURT, U. S.

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No. 1173

In the Supreme Court of the United States

OCTOBER TERM, 1968

HARLEY D. JONES,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS BY ITS ELECTORAL BOARD,

Defendant-Appellee.

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The Supreme Court of Illinois dismissed the appeal on January 16, 1969 without an opinion. A copy of the order is appended hereto in full as Appendix A.

GROUND ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction of this Court to review the order of the Illinois Supreme Court on appeal is conferred by 28 U. S. C. Section 1257 (2); F. C. A. 28 Section 1257 (2).

This is an appeal from an order of dismissal by the Supreme Court of Illinois on January 16, 1969. Notice of Appeal was filed on February 13, 1969 in the Clerk's Office of the Supreme Court of Illinois.

A copy of the dismissal order of January 16, 1969 is appended hereto as Appendix A. No official report of opinion filed.

It is believed that the case of *MacDougall* v. *Green*, 355 U.S. 281 (1948) decided by this Court involving the same Article 10, Section 3 of the Illinois Election Code sustains jurisdiction.

This Court noted jurisdiction in the case of *James L. Moore, et al.* v. *Samuel Shapiro, et al.* No. 620 on December 16, 1968 on the first two (2) questions presented in this cause. Appended as Appendix B.

STATUTES INVOLVED

This case involves a challenge to the validity and constitutionality of Article 10, Section 3 of the Illinois Election Code. That section reads in pertinent part as follows:

> Nomination of independent candidates (not candidates of any political party), for any office to be filled by the voters of the State at large may also be made by nomination papers signed in the aggregate for each candidate by not less than 25,000 qualified voters of the State; Provided, however, that included in the aggregate of 25,000 signatures are the signatures of 200 qualified voters from each of at least 50 counties within the State.

This case, also, involves a challenge to the constitutionality of Article 10, Section 4 of the Illinois Election Code. That section reads in pertinent part as follows:

Provided, further, that any person who has already voted at a primary election to nominate a candidate or candidates for any office or offices, to be voted upon at any certain election, shall not be qualified to sign a petition of nomination for a candidate or candidates for the same office or offices, to be voted upon at the same certain election.

QUESTIONS PRESENTED

1. Does the 1935 Amendment to Section 3 of Article 10 of the Election Code of Illinois requiring that nomination petitions for independent candidates for state-wide office must contain not less than 200 signatures from each of at least 50 counties, constitute an arbitrary, unreasonable and discriminatory restriction on the rights of the Illinois voters to nominate and vote for candidates of their own choice in violation of Amendment XIV to the U. S. Constitution, and particularly the privileges and immunities, equal protection of the laws and the due process clauses thereof?

2. Is the Supreme Court Decision in *MacDougall v. Green*, 355 U.S. 281 (1948) still the law? Has not Justice Douglas's dissent in the case now been adopted by the Supreme Court as a valid statement of the principles governing this cause?

3. Does the 1965 Amendment to the Election Code of Illinois Section 4 of Article 10 disqualifying any person who has voted at a primary election for state-wide office from signing an independent candidate or candidates petition for the same office or offices, to be voted upon at the same certain election, constitute an arbitrary, unreasonable and discriminatory restriction on the right of Illinois voters to nominate and vote for candidates of their own choice in violation of Amendment XIV to the U. S. Con-

stitution, and particularly the privileges and immunities, equal protection of the laws and the due process clauses thereof?

STATEMENT OF THE CASE

This suit originated as an action in the Circuit Court of Sangamon County, Illinois under Chapter 46, Article 10-10-1 of the Illinois Election Code to secure a judicial review of the decision of the Illinois State Electoral Board brought by Harley D. Jones, an independent candidate for the office of Lieutenant-Governor of the State of Illinois at the November 1968 election.

The defendant, State of Illinois by its Electoral Board, consisting of the following members, namely, Samuel Shapiro, Governor, Paul Powell, Secretary of State, Michael J. Howlett, Auditor of Public Accounts, Adlai E. Stevenson, III, Treasurer, William G. Clark, Attorney-General, James A. Ronan, Chairman of the State Democratic Committee, and Victor L. Smith, Chairman of the State Republican Central Committee. The board is provided for by Article 7, Section 14 of the Illinois Election Code, Illinois Revised Statute, Chapter 46 (1967).

On August 1, 1968, Harley D. Jones, appellant, filed his Statement of Candidacy and Oath and nomination papers without petition of nomination signatures for the Office of Lieutenant-Governor of the State of Illinois with the Secretary of State.

Prior to 1935, Section 3 of Article 10 required at least 25,000 electors sign a petition to nominate such candidates. In 1935 that statute was amended. The requirement of at least 25,000 signatures was retained, but the following proviso was added:

> Provided, that included in the aggregate total of twenty-five thousand (25,000) signatures of two hundred (200) qualified voters from each of at least fifty

(50) counties. (Illinois Revised Stat. 1967. Chapter 46, Section 10-3.)

This section provides the only means whereby qualified voters in Illinois can nominate independent candidates for state-wide office. An identical place-of-residence requirement is contained in Section 2 of Article 10 with respect to nominating candidates of a new political party for state-wide office.

An independent candidate or party is required to have 25,000 electors sign a petition to nominate a candidate, whereas a candidate for the same state-wide office of Lieutenant-Governor of the two major parties is required to file a minimum of 5,000 electors on their petitions without any 200 elector restriction from each of 50 counties in the state.

That no Objector's Petition was or were filed to his nomination or nomination papers, or was any copy of any Objector's petition sent to him by registered mail as provided in Article 10, Section 8 to his place of residence.

On August 16, 1968, the defendant, State Electoral Board, met and ordered as follows: "We order the above names removed in accordance with the provisions of Article 10 of the Election Code. (R. 18) The order was signed also, by the Chairman of the State Central Committee of the Republican and Democratic Party along with the other elected State Government officials on the Board.

On August 23, 1968, the Petition for Reversal of the defendant State Electoral Board decision was filed in the Circuit Court of Sangamon County, Illinois. The Petition of petitioner, Harley D. Jones, prayed for a reversal of the decision denying him a place on the November 1969 general election, as an independent candidate for Lieutenant-Governor of the State of Illinois and raising the Federal question in the pleadings on page 4 and 5 of

the record that Article 10-2 and 3 of the Illinois Election Code requiring 25,000 signatures plus 200 signatures from each of 50 counties is unconstitutional and in violation of the Fourteenth Amendment to the United States Constitution; said sections are illegal and void, and requesting a certification of his name on the November 1968 ballot.

That the proposed order submitted by the petitioner, Harley D. Jones, in his proposed order submitted to the Court Record page 58 as follows: "It is further ordered that Chapter 46, Article 10-2, 10-3, 10-4 and Article 7-14 is (and the same is hereby declared and ordered to be unconstitutional." Page 19 of the Record shows the denial as follows: Petitioner's Exhibit No. 2 being a proposed order offered by the Petitioner for signature of the Court is denied. The Petition for Reversal of the State Electoral Board's decision is denied. The federal question that 10-2, 10-3 and 10-4 violates the 14th Amendment to the U. S. Constitution was raised in the Supreme Court of Illinois in the Motion to Expedite Decision of Judgment filed September 21, 1968 (R. 2) to be heard on September 23, 1968 and denied on the same day. (R. 3) The federal question that 10-2, 10-3 and 10-4 violates Amendment 14 to the U. S. Constitution was raised again on Motion to the Illinois Supreme Court after the 6 to 3 decision of this Court in *Williams* v. *Rhodes,* 89 Sup. Ct. 5 (1968) to place the name of Harley D. Jones on the ballot pending the outcome of the appeal was denied by October 22, 1968. That the Federal question was raised again in the Appellant's Harley D. Jones Motion (R. 8) in Opposition to the Motion of the defendants-appellees to Dismiss the appeal as Moot (R. 7). The Supreme Court of Illinois dismissed the appeal on January 16, 1969. Appendix A. Appellant. Harley D. Jones, filed briefs and Excerpts of Record in the Supreme Court of Illinois on September 23, 1968 raising the federal question of violation of the 14th Amendment.

It is these rulings which are at issue in this appeal.

ARGUMENT

I.

THE 1935 AMENDMENT TO SECTION 3 OF ARTICLE 10 OF THE ILLINOIS ELECTION CODE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Circuit Court denying Plaintiffs' petition and denying all requested relief, relied solely on this Court's decision in *MacDougall* v. *Green,* 335 U.S. 281 (1948). It is true that the facts presented in the instant case are similar to those present in *MacDougall.*

The facts vary only in that in 1948 the five most populous Illinois counties had 59 per cent of the registered voters; in 1968 they had 61 per cent. In 1948 the forty-nine most populous counties had 87 per cent of the registered voters; in 1968 they had 93.4 per cent. As in the present case, Plaintiffs in the *MacDougall* case were seeking to be certified to the county clerks for a Federal and statewide election without obtaining 200 signatures from each of 50 counties as required by the 1935 amendment to Article 10 of the Illinois Election Code. In the twenty years since the *MacDougall* case, however, the law has changed considerably.

In the *MacDougall* case this Court, by a vote of six to three, affirmed the District Court's denial of an interlocutory injunction and dismissal of the complaint on the basis of *Colegrove* v. *Green,* 328 U.S. 549 (1946), and *Colegrove* v. *Barrett,* 330 U.S. 804 (1946). Justice Rutledge concurred with the majority on the ground that the Court should decline to exercise its jurisdiction in equity. Justice Douglas, with whom Justices Black and Murphy concurred,

dissented, and, it seems manifest, the statement of the law urged in that dissent is now the law of the land.

It may be that Justice Frankfurter's opinion at page 554 in the 1946 *Colegrove* case that judicial enforcement of equality of voting power would constitute "pernicious . . . judicial intervention in an essentially political contest dressed up in the abstract phrases of the law" actually stated the ruling of that case. If it did, the Supreme Court, in the 1962 case of *Baker* v. *Carr*, 369 U.S. 186 (1962), drastically changed the focus for viewing cases which involve political issues. The question in such cases, said the Court at page 226, "is the consistency of state action with the Federal Constitution." This Court held that complainant's allegation that the state's apportionment act resulted in a classification of voters which favored those in some counties over others presented a justiciable cause of action under the equal protection clause of the Fourteenth Amendment.

Since the *Baker* decision, this Court and many District Courts have held numerous state statutes which classified voters and weighted votes on the basis of place of residence for purposes of nomination or election to be unconstitutional, enjoined their enforcement, and ordered elections consistent with the principal of one man, one vote, (See Annotation, "Inequalities in Population of Election Districts or Voting Units as Rendering Apportionment Unconstitutional," 12 L. ed. 2d 1282.)

In *Reynolds* v. *Sims*, 377 U.S. 533 (1964), this Court affirmed the holding of a three-judge court that the existing and proposed apportionment provisions for the Alabama legislature were unconstitutional because they conflicted with the equal protection clause of the Fourteenth Amendment, and affirmed its order for a temporary reap-

portionment. The existing and proposed statutes apportioned state representatives and senators among districts and counties so that voters in the more populous counties did not elect their porportionate share of representatives and senators. As stated at 377 U.S. 555:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

This Court dealt squarely with the unconstitutionality of place-of-residence requirements such as that of the 1935 amendment to the Illinois Election Code. "Diluting the weight of votes because of place of residence," it said at page 566, "impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race. . . ." Not place of residence but "population," this Court held at page 567, "is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies."

This Court has left no doubt as to how the issues in *MacDougall* v. *Green,* 335 U.S. 281 (1948), were to be decided under the law as stated in the *Reynolds* case. In footnote 40 at page 563 in the *Reynolds* case, the Court quoted as follows from Justice Douglas' dissent in the *MacDougall* case:

> [A] regulation . . . [which] discriminates against the residents of the populous counties of the state in favor of rural sections . . . lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

> Free and honest elections are the very foundation of our republican form of government. . . . Discrimination against any group or class of citizens in the exercise of these constitutionally protected rights of citizenship deprives the electoral process of integrity. . . .
>
> None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees. . . . The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government.

Gray v. *Sanders,* 372 U. S. 368 (1963), held that the Georgia county-unit system in statewide primary elections was unconstitutional since it resulted in a dilution of the weight of some votes merely because of where the voters resided. As this Court said at pages 557-58):

> How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment.

Here, the geographical unit chosen for nomination and election of Presidential Electors is the State of Illinois. All registered voters must have equal power to nominate and elect, "wherever their home may be in the geographical unit."

Article 10 of the Illinois Election Code contains the only procedure for the nomination of candidates by voters who are not members of established political parties. It permits the forming of new parties and the nomination of independent candidates by nominating petitions. Under the Illinois Election Code the procedure of nominating by petition under Article 10 is as much an integral part of the whole elective system as are the primary provisions for established parties set out in Articles 7, 8 and 9.

The Illinois Supreme Court has recognized explicitly the role of the nominating process in the elective process. In *People* v. *Election Commissioners*, 221 Ill. 9, 18 (1906), the Court stated unequivocally:

> The right to choose candidates for public offices whose names will be placed on the official ballot is as valuable as the right to vote for them after they are chosen, *and is of precisely the same nature.* (Emphasis added.)

Similarly, in *The People* v. *Fox,* 294 Ill. 263 (1920), the Illinois Supreme Court held the Primary Act of 1919 unconstitutional as contrary to Section 18 of Article II of the Illinois Constitution, saying at page 268:

> Section 18 of the bill of rights provides that all elections shall be free and equal. This language has been construed by this court as meaning that the vote of every qualified elector shall be equal in its influence with every other one. . . . It is well settled in this state that the term "election" applies to a primary for the nomination of candidates as well as to the election of such candidates to office, and the right to choose candidates for public office, whose names are to be placed on the official ballot, has been held as valuable as the right to vote for them after they are chosen and is of precisely the same nature.

It is well settled that, where a party primary is an integral part of the procedure of election, the right to vote in a primary is a right protected by the United States Constitution. *United States* v. *Classic,* 313 U. S. 299, 314-318 (1941). In *Smith* v. *Allwright,* 321 U. S. 649, 664 (1944), this Court stated:

> When primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election.

Following *Baker* v. *Carr,* 369 U. S. 186 (1962), this Court has applied the same tests to determine the character of discrimination or abridgement in statutes governing the nomination of candidates as in their election. As already noted, *Gray* v. *Sanders,* 372 U. S. 368 (1963), found unconstitutional a county-unit system in statewide primary elections. There, at pages 374-75, it was held that "state regulation of this preliminary phase of the election process makes it state action" within the meaning of the Fourteenth Amendment. *Toombs* v. *Fortson,* 205 F.Supp. 248 (D.C. Ga., 1962), held unconstitutional a statute which rotated senatorial seats among the counties and permitted only voters in the county selecting the state senator to vote in the primary nominating the senator. *Moore* v. *Moore,* 229 F. Supp. 435 (DC Ala., 1964), held unconstitutional a statute which provided for election of congressmen at-large but which provided for nomination of congressional candidates from districts with unequal populations.

In *Socialist Labor Party* v. *Rhoades,* decided October 15, 1968 by this Court as Nos. 543 and 544, 89 Sup. Ct. 5 several provisions of the Ohio election laws were held to be unconstitutional, including a requirement respecting

petitions for nominations of independent candidates for presidential electors. This Court stated:

> To the extent that the Ohio Election Laws impose unreasonable restrictions on the qualifications of political third parties, restrict minority participation in Ohio's electoral process, prevent candidates for president and vice-president from qualifying as independents and deprive plaintiffs of their right of suffrage, either by denial of ballot position or effective write-in, they are unconstitutional and void.

As Justice Douglas stated in his dissent in *MacDougall* v. *Green*, 335 U. S. 281 (1948), at page 288:

> The protection which the Constitution gives voting rights covers not only the general election but also extends to every integral part of the electoral process, including primaries. (Citing cases.) When candidates are chosen for the general election by a nominating petition, that procedure also becomes an integral part of the electoral process. It is entitled to the same protection as that which the Fourteenth Amendment grants any other part.

The foregoing review of some of the leading cases subsequent to *Baker* v. *Carr* makes it evident that, while the facts in the present case are similar to those in *MacDougall* v. *Green*, the holding in the latter case no longer determines the issues they present. In *MacDougall* v. *Green*, this Court held at page 283:

> It is clear that the requirement of two hundred signatures from at least fifty counties gives to the voters of the less populous counties of Illinois the power completely to block the nomination of candidates whose support is confined to geographically limited areas. But the State is entitled to deem this power not disproportionate: of 25,000 signatures required, only 9,800, or 39%, need be distributed; the remaining 61% may

be obtained from a single county. And Cook County, the largest, contains not more than 52% of the State's voters. It is allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality.

All that remains of that holding is the conclusion that the 1935 amendment enables voters from less populous counties to block the nomination of candidates whose support is confined to a majority of the population which resides in geographically limited areas. It is no longer allowable State policy to permit a minority of the voters, simply because of where they reside, to block the nomination of candidates supported by a majority.

"Citizens," said the Court at page 580 in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), "not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations."

Since the "right to vote freely for a candidate of one's choice is of the essence of a democratic society," as this Court said at page 555 of *Reynolds* v. *Sims, supra*, then the method of choosing that candidate must meet the test of the equal protection clause of the Fourteenth Amendment. Under the 1935 amendment to Article 10 of the Illinois Election Code, petitions signed by every one of the 93.4 per cent of the state's qualified voters who reside in the most populous counties could not nominate a single candidate for state office. On the other hand, petitions signed by 25,000 of the 6.6 per cent of the state's qualified

voters properly distributed in fifty of the fifty-three least populous counties could nominate a complete slate of candidates. Such classification of voters on the basis of where they live is contrary to the equal protection clause of the Fourteenth Amendment and is, therefore, unconstitutional. Then, too, the requirement of 25,000 signatures of electors from a new party or an independent candidate, while the two other major parties have only to secure 5,000 primary electors for the same office is contrary to equal protection clause of the Fourteenth Amendment, and is therefore, unconstitutional and invalid.

In *Reynolds* v. *Sims,* 1964, cited also, as 84 Supreme Court 1362, stated on page 1382 that "One must be ever aware that the Constitution forbids "sophisticated as well as simple mind modes of discrimination."

II.

THE 1935 AMENDMENT TO SECTION 3 OF ARTICLE 10 OF THE ELECTION CODE REQUIRING 200 SIGNATURES FROM EACH OF 50 COUNTIES CONSTITUTES AN ARBITRARY, UNREASONABLE, AND DISCRIMINATORY RESTRICTION ON THE RIGHT OF ILLINOIS VOTERS TO NOMINATE AND VOTE FOR CANDIDATES OF THEIR OWN CHOICE. ALSO, THE 25,000 SIGNATURES ON INDEPENDENT PARTY CANDIDATES AND CANDIDATES FOR STATEWIDE OFFICES WHILE THE MAJOR PARTIES NEED ONLY A MINIMUM OF 5,000 VIOLATES THE EQUAL PROTECTION CLAUSE.

As discussed above, the *sole* authority on which the Circuit Court judge relied in upholding Section 3 of Article 10 has, through a long series of decisions of this Court, been thoroughly undercut. However, there are additional reasons which mitigate against its continued viability.

The requirement here in issue was added by amendment in 1935. *Laws,* 1935, p. 789. Before that amendment, the signatures required to nominate independent candidates for

statewide offices, and for Presidential Electors, were counted on a statewide basis and only in terms of the total to be obtained: 25,000 signatures of qualified voters in the state. The requirement for nominating candidates of a new political party was identical.

The 1935 amendment added an additional and weighted requirement based on the place of residence of the registered voters. The 1935 amendment made it mandatory that the 25,000 registered voters meet a further, and, in view of the population distribution in Illinois, highly unequal requirement as to their place of residence within the statewide geographical unit for which candidates were to be elected. The 25,000 signatures must include those of at least 200 registered voters from each of 50 counties. In other words, under the 1935 amendment, the signatures of neither 25,000 registered voters nor of 4,000,000 registered voters will satisfy the statutory requirement for nomination of independent or new-party candidates unless they meet place-of-residence requirements contrary to the population-based requirements of the Fourteenth Amendment.

The distribution of population among the 102 Illinois counties shows the extent to which the 1935 amendment debases and dilutes the right of qualified voters to participate in the electoral process.

More than 50 per cent of the total Illinois population and more than 50 per cent of the Illinois registered voters reside in *one* county, Cook County.

Approximately 61 per cent of the Illinois registered voters reside in the state's *five* most populous counties: Cook, DuPage, Lake, Madison, and St. Clair.

Approximately 93.4 per cent of the Illinois registered voters reside in the state's *forty-nine* most populous counties: Cook, DuPage, Lake, Madison, St. Clair, Adams,

Bureau, Champaign, Christian, Clinton, Coles, DeKalb, Franklin, Fulton, Hancock, Henry, Iroquois, Jackson, Jefferson, Kane, Kankakee, Knox, LaSalle, Lee, Livingston, Logan, Macon, Macoupin, Marion, McDonough, McHenry, McLean, Montgomery, Morgan, Ogle, Peoria, Randolph, Rock Island, Saline, Sangamon, Shelby, Stephenson, Tazewell, Vermillion, Whiteside, Will, Williamson, Winnebago and Woodford.

Approximately 6.6 per cent of Illinois registered voters reside in the *fifty-three* remaining counties.

The 1935 amendment thus prevents the majority of the state's registered voters who reside in Cook County from nominating independent candidates for Presidential Electors and statewide offices or from forming a new political party in the state for those purposes.

The 1935 amendment also prevents the 61 percent of the state's registered voters who reside in Cook, DuPage, Lake, Madison, and St. Clair Counties from nominating independent candidates for Presidential Electors and statewide offices or from forming a new political party in the state for those purposes.

The 1935 amendment even prevents the 93.4 per cent of the state's registered voters who reside in the state's forty-nine most populous counties from nominating independent candidates for Presidential Electors and statewide offices.

But the 1935 amendment permits 25,000 of the remaining 6.6 per cent of the registered voters properly distributed among fifty of the fifty-three least populous counties to nominate such candidates or to form such a new party.

The effect of the 1935 amendment is drastically to debase the weight of a qualified voter in a populous county as against the weight of a qualified voter in the less populated counties. No number of additional signatures over and above the required 200 in a populous county can overcome the lack of 200 in one of the less populated counties. One qualified voter does not have the same right to nominate as every other qualified voter. His signature on a nominating petition counts only if he resides in the right county. And the smaller the population of the county in which he resides, the more his signature counts.

The grotesque nature of the 1935 amendment to Article 10 of the Illinois Election Code is illustrated by the fact that the voters of Cook County, since they outnumber the voters of all the rest of the state put together, could elect the Presidential Electors, a United States Senator, and various statewide officers in the face of the united opposition of the voters of the other 101 counties. Indeed, that possibility is required by the Fourteenth Amendment to the United States Constitution.

Nevertheless, although that majority can elect, under the Illinois Election Code it cannot nominate. Although the minority cannot elect, it can nominate.

In fact, the majority cannot really elect in Illinois. The power of a majority to elect must mean the power to elect candidates of its and not the minority's choice. Since the majority cannot nominate candidates without the support of the minority, it can only elect candidates the minority has also agreed to choose.

It is clear, therefore, that the 1935 amendment to Article 10 of the Illinois Election Code heavily overweights the electoral power of voters residing in less populous counties and greatly underweights the electoral power of voters

residing in the populous counties. The 1935 amendment deviates drastically from the rule of one man, one vote.

It is also clear that requiring 25,000 signatures on independent party candidates or independent candidates while the other two major parties have to only secure a minimum of 5,000 signatures on their nomination papers, and this from the entire state without the 50 county restriction constitutes an arbitrary unreasonable, and discriminatory of the right of Illinois voters to nominate and vote for candidates of their own choice, and violates the equal protection clause of the fourteenth amendment.

III.

DOES THE 1965 AMENDMENT TO THE ELECTION CODE OF ILLINOIS ARTICLE 10, SECTION 4, DISQUALIFYING ANY PERSON WHO HAS VOTED AT A PRIMARY ELECTION FOR STATE-WIDE OFFICE FROM SIGNING AN INDEPENDENT CANDIDATE OR CANDIDATES' PETITION FOR THE SAME OFFICE OR OFFICES, TO BE VOTED ON AT A CERTAIN ELECTION, CONSTITUTE AN ARBITRARY, UNREASONABLE AND DISCRIMINATORY RESTRICTION ON THE RIGHT OF ILLINOIS VOTERS TO NOMINATE AND VOTE FOR CANDIDATES OF THEIR OWN CHOICE IN VIOLATION OF AMENDMENT XIV TO THE U.S. CONSTITUTION, AND PARTICULARLY, THE PRIVILEGES AND IMMUNITIES, EQUAL PROTECTION OF THE LAWS AND THE DUE PROCESS CLAUSES THEREOF?

Mr. Justice Black of this Court in *Williams* v. *Rhodes*, decided October 15, 1968, 89 Sup. Ct. 5 (1968) at page 10, stated:

> "But we have also held many times invidious distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the

law, the interests claims to be protecting, and interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights —the rights of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly, we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined'."

Mr. Justice Black in delivering the Opinion of this Court, further stated on page 11 *ibid*:

> "There is, of course, no way two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.".

This we submit that Illinois highly restrictive provisions requiring, 25,000 electors' signatures, where the major parties' candidates have only to secure a minimum of 5,000 signatures of electors statewide, while a new party or an independent candidate must make sure that included in the 25,000 signatures are 200 signatures from each of 50 counties within the state of Illinois, plus the fact, that electors who voted in the primary are barred under 10-4 to sign as electors, plus the inclusion of the Republican

and Democratic State Chairman on the Electoral Board sharing sovereign executive powers with the Executive branch of our government. Here is a definite pattern of restriction of Illinois voters' rights.

Here, the totality of Illinois restrictive laws taken as a whole imposes severe burdens on the voting and associational rights on the electorate and is invidious discrimination in violation of the Equal Protection Clause.

The Supreme Court of Illinois in dismissing the appeal (Appendix A) on the basis of the Motion of the Defendant, Electoral Board that the question was moot affirms the decision of the Circuit Court of Sangamon County denying relief to the Plaintiff, Harley D. Jones, and thus upheld the sections of the Illinois Election Code which are repugnant to the rulings of this Court.

We will next address ourselves to this question of mootness. This court in *Gray* v. *Sanders,* 372 U.S. 368 (1963) at page 374 stated that:

> "Judge Sibley in *Chapman* v. *King,* 154 F. 2nd 460, showed with meticulous detail the manner in which Georgia regulates the conduct of party primaries id. pp. 463-464 and he concluded: 'we think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and it puts its power behind the rules of the party. It adopts the primary as a part of the public election machinery. The exclusions of voters made by the party by the primary rules becomes exclusions enforced by the State'." id. p. 464.

Continuing from page 374, this court stated:

> "We agree with that result and conclude that the State regulation of this preliminary phase of the election process makes it State action." See *U. S.* v. *Classic,* 313 U.S. 649 and *Smith* v. *Allwright,* 321 U.S. 649.

We, also, agree that appellee, like any person whose right to vote is impaired (*Smith* v. *Allwright, supra; Baker* v. *Carr, supra,* pp. 204-208), has standing to sue. In *Gray* v. *Sanders, supra,* at 375 and 376, the court stated:

> "Moreover, we think the case is not moot by reason of the fact that the Democratic Committee voted to hold the 1962 primary on a popular vote basis — in addition, the voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly, where the practice is deeply rooted and of long standing. For if the case were dismissed as moot appellants would be 'free to return to — (their) old ways'."

United States v. *Grant Co.,* 345 U.S. 629 at 632, the court further went on to state:

> "This together with a public interest in having the legality of practices settled, militates against a mootness conclusion. *U. S. Trans-Missouri Freight Association, supra,* at 309-310. For to say that the case has become moot means the defendant is entitled to a dismissal as a matter of right. *Labor Board* v. *General Motors Corp.,* 179 F. 2nd 221 (1950).
>
> "The courts have rightly refused to grant defendants such a powerful weapon against public law enforcement."

In *Gray* v. *Sanders, supra,* at 379-380, the court stated:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote — whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'We the people' under the Constitution vizualizes no preferred class of voters, but equality among those who meet the basic qualifications.

The idea that every voter is equal to every other voter in his State when he casts his ballot in favor of several competing candidates underlies many of our decisions."

"The only weighing of votes sanctioned by the constitution concerns matters of representation, such as allocation of Senators irrespective of population and the use of electoral college in the choice of a President.

"Yet when Senators are chosen, the Seventeenth Amendment states the choice must be made 'by the people.' But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded."

"As we stated in *Gomillion* v. *Lightfoot*, 364 U.S. 339 at 347: 'When an exercise of power wholly within the domain of State interest, it is insulated from federal judicial review.' But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right."

There are some 505 sections embraced in 30 articles of the Election Code of Illinois, so that if parts of Article 10, Sections 2, 3, 4, and Article 7, Section 14 of Chapter 46 is declared invalid, it would leave the Illinois. Article 30-3 provides that if any section, sub-division, sentence or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

The plaintiff, Harley D. Jones, in order to protect his constitutional rights followed the procedure in Chapter 46, Article 10, Section 10-1 by filing his Petition to Reverse the Decision of the Electoral Board in the Circuit Court of Sangamon County, raised the federal questions in his pleadings, which were overruled and his prayer denied in said court. Plaintiff, appealed to the Supreme Court of

Illinois, raised and preserved the Federal Questions of the Equal Protection Clause in his briefs and in three separate and distinct motions, but the same were overruled and the appeal dismissed as moot on January 16, 1969. Hence this appeal.

CONCLUSION

The case of *Baker* v. *Carr*, 369 U.S. 186 (1962), *Gray* v. *Sanders*, 372 U.S. 368 (1963), *Reynolds* v. *Sims*, 377 U.S. 533 (1964), *Avery* v. *Midland County*, Texas 88, Supt. Court 1114 (1968), *Glenn A. Williams* v. *James Rhodes*, 89 Sup. Ct., 5 (1968), #543 and 544, October Term, Opinion rendered October 15, 1968, as well as many election cases which have been decided have settled the question that the State and Federal District Courts have jurisdiction of a suit such as this which attacks a State Statute as unconstitutional on the ground that it deprives persons of Equal Protection of the Laws by debasing and diluting their right to nominate and vote; that such suits state a justiciable cause of action; that persons such as the Plaintiff, Harley D. Jones, have standing in such suits to challenge State Statutes as unconstitutional for violating the Fourteenth Amendment; and the Petition to Reverse the Order of the State Electoral Board as provided by Chapter 46, Article 10, Section 10-1 of the Illinois Code is an appropriate remedy in such suits.

For all the reasons stated above, Plaintiff-Appellant respectfully submits that his prayer for reversal of the order of the Illinois State Electoral Board as set forth in the Petition should have been granted and that the Circuit Court of Sangamon County erred in denying reversal of the Defendant-Appellee, Illinois Electoral Board, and further, that the Illinois Supreme Court erred in dismissing this cause.

It is urged that this Court note probable jurisdiction, hear the cause, and thereupon reverse, and for such other and further relief as this Court shall deem meet.

Respectfully submitted,

HARLEY D. JONES, *Pro Se*
WALTER F. CEBELIN
Attorneys for Plaintiff-Appellants.

APPENDIX A

STATE OF ILLINOIS)
) SS.
SUPREME COURT)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of January, in the year of our Lord, one thousand nine hundred and sixty-nine, within and for the State of Illinois.

PRESENT:

Roy J. Solfisburg, Jr., Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Thomas E. Kluczynski
Justice Ray I. Klingbiel
Justice Robert C. Underwood
Justice Daniel P. Ward
William J. Scott, Attorney General
Robert G. Miley, Marshal

Attest: Justin Taft, Clerk

BE IT REMEMBERED, that, to-wit: on the 16th day of January, 1969, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

HARLEY D. JONES,

Appellant,

No. 41652 vs.

STATE OF ILLINOIS, By Its Electoral Board,

Appellee.

Appeal from Circuit Court, Sangamon County — 265-68

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 7th day of February, 1969.

/s/ Justin Taft

Clerk,

Supreme Court of the State of Illinois.

(SEAL)

APPENDIX B

SUPREME COURT OF THE UNITED STATES

I, JOHN F. DAVIS, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing pages numbered from 1 to 29, inclusive, contain a true copy of the jurisdictional statement and appendix thereto in the case of

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JAMES L. MOORE, ET AL.,

Appellants,

vs.

SAMUEL SHAPIRO, ETC., ET AL.

No. 620, October Term, 1968, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Washington, this Twenty-First day of February, A.D. 1969.

JOHN F. DAVIS

Clerk of the Supreme Court of the United States

By *Michael Rodak,*

Deputy Clerk

(SEAL)